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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4732 OF 2007
IN
FIRST APPEAL NO.2382 OF 2007

Smita Ravindra Salvi ...Applicant
V/s.
Kalyanji J. Shah & Ors. ...Respondents

Mr.Milind Vasudev, Advocate, i/b. M/s.Malvi Ranchoddas & Co., for the Appellant.

Mr.H.S.S. Murthy, Advocate, i/b. S.K. Dubey for the Respondents.

CORAM : ABHAY S. OKA, J.

DATE : 23RD NOVEMBER, 2007.

P.C.:

1. Heard learned Counsel appearing for the applicant and for the respondents.

2. The learned Trial Judge has passed the impugned decree directing the applicant to hand over vacant possession of the suit property. By the impugned judgment and decree, an enquiry contemplated under Order XX Rule 12 of the Code of Civil Procedure, 1908, has been directed to be held. The suit property is an open land admeasuring 627 sq.yards at Link Road, Malad (West), Village Malad, Taluka Borivali, Bombay Suburban District.

3. The applicant-appellant claims to be in possession on the basis of an agreement for sale. It is an admitted position that suit for specific performance was filed by the applicant in this Court which has been dismissed for non-prosecution. The learned Cousnel for the applicant stated that the applicant is taking steps for restoration of the Suit. The contention of the respondent is that the suit property is given by the applicant to various parties for holding functions including marriages, receptions and is earning huge profits. The submission of the respondent is that whenever the property is allowed to be used for functions, the applicant is earning a sum of Rs.1,00,000/- per day.

4. The learned Counsel appearing for the applicant, on instructions of the applicant, stated that without prejudice to the rights and contentions in the Appeal, the applicant is ready and willing to deposit a sum of Rs.10,000/- per month as a condition for grant of stay. The submission of the learned Counsel for the respondent is that considering the location and market value of the suit property, the amount offerred by the applicant is very much on the lower side.

5. The inquiry as to mense profit is yet to be held. The suit for specific performance filed by the applicant stands dismissed as of today.

6. Considering the nature of the controversy, there cannot be an unconditional stay to the execution of the decree for possession. The applicant will have to deposit a reasonable amount as a condition for grant of stay. Considering the facts and circumstances of the case, the execution of the decree dated 25-06-2007, except the direction given to hold inquiry regarding mense profit, will have to be stayed subject to condition of the applicant depositing in the Trial Court a sum of Rs.25,000/- per month. The amount will have to be deposited from July, 2007 onwards.

7. It will be always open for the parties to move this Court for modification of this order in case of change in circumstances. Hence the Civil Application is disposed of by passing following order:-

"O R D E R"

(i). The execution and operation of the impugned judgment and decree dated 25-06-2007, except the direction for holding inquiry as regards mense profit, will remain stayed till the final disposal of the Appeal subject to compliance with the following conditions:-

(a). The applicant will deposit with the Trial Court a sum of Rs.25,000/- per month from 1st July, 2007 till the final disposal of the Appeal.

(b). The amount payable from July, 2007 till the end of December, 2007 shall be deposited by the applicant with the Trial Court on or before 31st December, 2007.

(c). The amount payable from the month of January, 2008 shall be deposited on or before 10th day of every calendar month.

(d). The applicant will file an undertaking in this Court stating therein that he will not create third party interests and he will not part with possession of the suit property till the final disposal of the Appeal. The undertaking shall be filed within a period of four weeks from today.

(ii). Liberty to the parties to apply for modification of this order as indicated above. If the applicant fails to comply with any of the aforesaid conditions, it will be open for the respondents to apply for vacating interim relief.

9. In case the respondents furnish bank guarantee of any nationalized bank for the amounts deposited by the applicant, the Trial Court will permit the respondents to withdraw the amounts deposited by the applicant after accepting the bank guarantee. Applicant will be heard by the Trial Court before accepting the bank guarantee. If the amounts deposited by the applicant are not withdrawn by the respondents within a period of six months from the date of deposit, the said amount shall be invested by the Trial Court in any nationalized bank in a fixed deposit and the said fixed deposit shall be renewed from time to time till the final disposal of the Appeal.

10. Parties and the Trial Court shall act on the authenticated copy of this order.

[ABHAY S. OKA, J.]